EXCISE DIRECTOR: Tax on alcoholic vinous beverages.

December 16, 1933.

Hon. Paul P. Fry,
State Excise Director,
State House,
Indianapolis, Indiana.

Dear Mr. Fry:

I have before me your letter of the 8th of December in regard to the tax to be collected by you on the sale of alcoholic vinous beverages in the State of Indiana, your specific question being as follows:

"I am frequently asked to define the amount of excise tax to be collected by the State of Indiana upon alcoholic vinous beverages manufactured within the State of Indiana and the amount of excise tax to be collected upon alcoholic vinous beverages manufactured outside and imported into the State of Indiana, and I hereby request an opinion from you as to the amount of excise taxes to be collected upon the sale of such beverages."

Your question requires a consideration of Section 15 and Section 19 of Chapter 80, of the Acts of the General Assembly of Indiana, 1933, entitled "An act concerning alcoholic beverages, and declaring an emergency," approved March 1, 1933 (Acts 1933, page 492).

Section 15, above referred to, is as follows:

"Any person holding a permit to manufacture alcoholic vinous beverages, issued under the provisions of this act, may manufacture, bottle, possess, transport and sell such beverages, as in this act defined; any such authorized manufacturer shall pay unto the State of Indiana a license fee of fifty cents on each gallon of alcoholic vinous beverage manufactured and sold by him pursuant to the terms of this act, which license fee shall be paid on the first and fifteenth days of each month, on all such beverages so manufactured and sold by him, during the preceding half monthly period; such license fee is hereby levied, and the same shall be collected by the director, and by him paid into the state treasury; and the director shall have power to
prescribe regulations and provide and maintain gaugers in such manufacturer's plant for the proper gauging of such beverage and assessment of such license fees; and there shall be no further license fees or tax levied on any such alcoholic vinous beverages on the occasion of subsequent sales thereof within this state."

Section 19, above referred to, is as follows:

"Any such wholesaler or dealer holding a permit to wholesale or deal at retail in alcoholic vinous beverages, as in this act provided, may import such alcoholic vinous beverages into this state, under and pursuant to any act of congress, and the regulations promulgated pursuant thereto regulating the same, and subject to the provisions of this act. Upon the importation and sale of any such alcoholic vinous beverages, the wholesaler or dealer so selling the same shall pay a license fee for such sale to the State of Indiana of the sum of twenty cents on each pint of alcoholic vinous beverage so sold by him. Such license fee is hereby levied, and the director is hereby authorized to promulgate regulations to provide for the collection of the same from such wholesale and/or dealer; and when collected, he shall pay such license fees monthly into the state treasury."

It will be noted that the tax levied in each case is upon the sale of the alcoholic vinous beverage, coupled with a separate act in each section, i.e., in Section 15, "manufacture and sale" and in Section 19, "importation and sale." The sale itself is the thing which causes the payment of the tax, and one might conceivably manufacture or import and no tax would be due until the sale took place. This is important, because if the tax were levied upon the act of importing alone, no tax could be collected as its imposition would be in contravention of Article I, Section 8, Clause 3 of the Constitution of the United States, which is as follows:

"Section 8. Congress shall have power * * *
(3) To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

But as soon as the goods are in the state, as in this case, a different state of affairs exists.
"As soon as the goods are in the state and become part of its general mass of property, they will become liable to be taxed in the same manner as other property of similar character, as was distinctly held by this court in the case of Brown v. Houston, 114 U. S. 622. When goods are sent from one state to another for sale, or, in consequence of a sale, they become part of its general property, and amenable to its laws; provided that no discrimination be made against them as goods from another state, and that they be not taxed by reason of being brought from another state, but only taxed in the usual way as other goods are. Brown v. Houston, supra; Machine Co. v. Gage, 100 U. S. 676."

You will notice in the language quoted that such goods imported and sold, however, must not be taxed for more, "but only taxed in the usual way as other goods are."

The Supreme Court of the United States stated this principle again in the case of Tiernan v. Rinker, 102 U. S. 123, at 127.

"A tax cannot be exacted for the sale of beer and wines when a foreign manufacture, if not exacted from their sale when of home manufacture."

Alcoholic liquors or beverages are in a separate class as to taxes and all decisions on the question of interstate commerce do not affect them. You will note, however, that the one exception seems to be that with regard to discrimination.

As far back as 1890, Congress enacted a statute "that all intoxicating liquors or liquids brought into or remaining in a state should, upon their arrival therein, be subject, like domestic liquors, to the operation of laws enacted by the state in the exercise of its police powers." 26 Stat. 313. After the passage of that act the Chief Justice said that Congress had declared "that imported liquors or liquids shall, upon arrival in a state, fall into the category of domestic articles of a similar nature." The Supreme Court then held, that intoxicating liquors brought into a state before this Act of Congress, were subject to the operation of the earlier statutes of the state, remaining unrepealed.

In re Rohrer, 140 U. S. 545.
The present Federal Statute on the question is, Title 27, Sec. 121, U. S. C. A. (26 Stat. 313; Aug. 8, 1890, C. 728), which is as follows:

"121. State statutes as operative on termination of transportation; original packages. All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

Applying the above reasoning, then it would appear that the sale of imported alcoholic vinous beverages must be taxed in the same manner as domestic vinous beverages, as they fall into the same category as those produced in the State of Indiana. This would seem to be particularly so, since in either event there must be a sale in order for the tax to attach. As noted above, also, there must be no discrimination because such beverages were produced or manufactured in another state. Therefore, any tax in excess of 50 cents a gallon as levied by Section 15 of the law, supra, would be discrimination and to that extent the tax levied by Section 19, supra, is void as being in contravention of Article I, Section 8, of the Constitution of the United States.

It is, therefore, my opinion that the tax on all alcoholic vinous beverages sold in the State of Indiana must be at the rate of 50 cents a gallon, the license fee established for such beverages produced and sold in the state, and such tax should be collected from the persons authorized to manufacture or import such beverages upon the sale thereof, and shall be reported to the Excise Director as provided in Section 15 of the Act, supra.

It was clearly the intention of the legislature to tax all such alcoholic vinous beverages and the rate must be equal on each class to avoid discrimination in favor of either class.